



No 476

Office - Supreme Court

FILED

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**SUPREME COURT OF THE UNITED STATES.**

CHARLES ELMORE CLE

**OCTOBER TERM, 1940.**

**BRYANT McQUILLEN ET AL, PETITIONERS,  
-AGAINST-  
THE NATIONAL CASH REGISTER CO., ET ALS,  
RESPONDENTS.**

**MOTION THAT RECORD FILED HEREIN BE DEEMED  
SUFFICIENT FOR APPLICATION FOR WRIT OF  
CERTIORARI TO THE C. C. A. (4).**

Application for a writ of certiorari to the C.C.A. (4) having been filed in this court, Sept. 30, 1940, applicants move that certified record on appeal from the D.C. of M.D., record of proceedings in the C.C.A. (4), applicants' and respondents' printed appendices filed in the C.C.A. (4), copies of NCR's annual reports for 30-37 inc., and such other records, papers and proceedings as were sent here by the C.C.A. (4) shall be considered as the record for the determination by this court of their application. In support hereof, applicants state:

Pursuant to C.C.A. (4) R. 10, applicants filed in C.C.A. a complete record on appeal from the interlocutory and final decrees of the Md. court. They attached to their brief a printed appendix of such parts of the appeal as they deemed necessary for the C.C.A. (4) to read and consider omitting NCR's annual reports for 30-37 inc. Copies of such parts of latter, agreeable to respondents, are filed here. Respondents also filed printed copies of such parts of appeal record as they deemed necessary for C.C.A. to consider.

It thereafter rendered its opinion affirming lower courts' judgment.

Pursuant to C.C.A. rule and rule of this court, C.C.A. (4) filed here a certified appeal record, record of proceedings in its court, all proceedings, evidence and exhibits introduced below, and 12 copies of said printed appendices, which constitutes everything essential and necessary for the consideration of their application here.

Applicants requested respondents to stipulate that such record be deemed sufficient for the purpose of this application. Respondents declined to stipulate, insisting that their appendix be re-printed and inserted in applicants' appendix, more especially because there was omitted (inadvertently) from Md. Ct.'s final opinion (appls.' apx. pp. 98-129) 2 paragraphs, printed in respondents' appendix and in 27 F.S. 639, 645, par. 1, 646, through par. 1. Such omission occurred because the opinion was copied from the Daily Record of Baltimore, May 9, 39, which omitted these 2 paragraphs.

There is now before this court all matters necessary to enable it to fully determine this application. Re-printing the whole or parts of respondents' appendix, omissions or other parts of record, is unnecessary and wasteful. Applicants aver that respondents' refusal to stipulate, is arbitrary, putting them to unnecessary expense and hardships and unduly hindering them. Applicants offer to print, re-print or revise such parts as this court shall order.

Wherefore, applicants pray that their motion be allowed, that records and papers filed here as aforesaid be deemed sufficient for the purposes hereof and for further relief as shall be just.

ISRAEL GOROVITZ,

*Counsel for Applicants.*

ARTHUR BERENSON,

*of Counsel.*

